

## Message Text

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ORIGIN L-03

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TO AMEMBASSY CAIRO

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C O N F I D E N T I A L STATE 110595

E.O. 11652: GDS

TAGS: PFOR, MARR, EAID, EG

SUBJECT: SUEZ CANAL CLEARANCE AND SALVAGE AGREEMENTS

REFS: (A) STATE 95789, (B) CAIRO 3360, (C) CAIRO 3362

1. APPRECIATE YOUR EFFORTS WITH MFA LEGAL ADVISOR ON SUBJECT AGREEMENTS. WHILE WE ARE NOT IN POSITION TO CONCUR IN CLEARANCE AGREEMENT ON BASIS PROPOSED BY HAMID, WE BELIEVE WE SEE WAY IN WHICH OUTSTANDING ISSUES CAN BE RESOLVED TO SATISFACTION OF BOTH SIDES. HAMID'S PROPOSED CHANGES IN SALVAGE AGREEMENT ARE ACCEPTABLE.

2. WITH RESPECT TO MATTER OF THIRD-PARTY CLAIMS PROVISION IN CLEARANCE AGREEMENT (PARA 2 REF B), WE BELIEVE BEST WAY TO PRESERVE "GOOD WILL ON BOTH SIDES" IS TO AVOID POTENTIAL DISPUTES OVER SUCH PERIPHERAL MATTERS AS POSSIBLE THIRD-PARTY CLAIMS BY PROVIDING FOR THEM IN CONFIDENTIAL

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ADVANCE. HOWEVER, RECOGNIZING EGYPTIAN BUREAUCRATIC

PROBLEMS AND SENSITIVITIES, WE ARE PREPARED TO ACCEPT LANGUAGE IN FAHMY'S NOTE WHICH WOULD GO NO FURTHER THAN SIMPLY ACKNOWLEDGING THAT USG, IN PROVIDING CANAL CLEARANCE ASSISTANCE AT REQUEST OF GOE, IS NOT ASSUMING ANY NEW LEGAL RESPONSIBILITY TOWARD THIRD PARTIES AND THAT, TO EXTENT THAT GOE WOULD OTHERWISE BE LEGALLY RESPONSIBLE TO THIRD PARTIES FOR CLAIMS INCIDENT TO CLEARANCE AND ULTIMATE OPERATION OF CANAL, THAT RESPONSIBILITY NOT ALTERED BY VIRTUE OF USG PARTICIPATION IN CLEARANCE PROJECT.

THIS, TO US, IS MINIMUM NECESSARY MEETING OF MINDS ON THIRD-PARTY CLAIMS QUESTION. IT DOES NOT CREATE ANY NEW LIABILITY FOR GOE BUT SIMPLY AFFIRMS UNDERSTANDING THAT USG, IN ASSISTING GOE TO CARRY OUT CANAL CLEARANCE, IS NOT ASSUMING ANY OF LIABILITY TO WHICH GOE MIGHT OTHERWISE BE EXPOSED IN CARRYING OUT OPERATION. ACCORDINGLY, YOU MAY PROPOSE FOLLOWING ALTERNATIVE TO HAMID: PARAGRAPH 2 OF FAHMY'S NOTE WOULD NOT INCLUDE INTRODUCTORY PHRASE SET FORTH PARA 3(A) REF A. HOWEVER, NEW SECOND SENTENCE WOULD BE ADDED TO PARA 2 OF HIS NOTE, TO READ AS FOLLOWS: "IT IS UNDERSTOOD THAT THE GOVERNMENT OF THE UNITED STATES ASSUMES NO RESPONSIBILITY TOWARD THIRD PARTIES REGARDING CANAL CLEARANCE ACTIVITIES OR THE SAFETY OF CONDITIONS IN THE CANAL AND SURROUNDING AREAS; RESPONSIBILITY IN THESE MATTERS, TO THE EXTENT PROVIDED FOR UNDER EXISTING PRINCIPLES OF INTERNATIONAL LAW, WILL REMAIN WITH THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT". WE DO NOT BELIEVE THIS SHOULD GIVE THE GOE ANY PROBLEMS WHATEVER.

3. AS TO THE PROBLEM OF NOTIFICATION/AUTHORIZATION OF ENTRY AND DEPARTURE OF VESSELS AND AIRCRAFT, SITUATION SEEMS TO BE THAT, WHILE EXISTING PRACTICAL ARRANGEMENTS SATISFACTORY, NEITHER GOVERNMENT CAN AS A LEGAL MATTER ACCEPT FORMAL STATEMENT OF PROCEDURES WHICH IS ACCEPTABLE TO THE OTHER. FOR OUR PART, WE SEE FUNDAMENTAL DISTINCTION BETWEEN DEPARTURE OF AIRCRAFT, WHICH INVOLVES USE OF AIR SPACE SUBJECT TO TOTAL CONTROL OF SUBJACENT STATE, AND DEPARTURE OF VESSELS FROM PORTS TRANSITING TERRITORIAL WATERS THROUGH WHICH RIGHT OF INNOCENT PASSAGE EXISTS. THUS, WHILE WE RECOGNIZE IMPORTANCE OF SPECIAL CIRCUM-  
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STANCES TO WHICH HAMID REFERRED (PARA 3 REF B.), WE UNABLE ACCEPT FORMAL PRECEDENT WHICH COULD PREJUDICE OUR GENERAL POSITION ON THESE MATTERS. SINCE GOE APPARENTLY NOT NOW PREPARED TO CONCEDE THIS POINT, WE PROPOSE TO TAKE THE ISSUE OUT OF THIS NEGOTIATION BY SUBSTITUTION OF FOLLOWING LANGUAGE IN PARA 3A OF FAHMY'S NOTE: "A. PROCEDURES GOVERNING THE ENTRY AND DEPARTURE OF VESSELS AND AIRCRAFT ASSIGNED TO OR SUPPORTING THE FORCE TO AND FROM PORTS,

AIRFIELDS AND EGYPTIAN TERRITORIAL WATERS SHALL BE THE SUBJECT OF SEPARATE DISCUSSIONS BETWEEN THE TWO GOVERNMENTS.

4. REGARDING PARA 5 REF B, NO OBJECTION TO USE OF WORD "ARRANGEMENT" IN LIEU OF "AGREEMENT", ALTHOUGH HAMID SHOULD BE AWARE WE WILL REGARD EXCHANGE AS AGREEMENT FOR PURPOSES OF U.S. LEGAL REQUIREMENTS. WE ASSUME THAT PENULTIMATE PARAGRAPH WOULD BE ALONG LINES SUGGESTED PARA 4 REF A.

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5. ALL PROPOSED CHANGES IN SALVAGE AGREEMENT (REF C) ARE ACCEPTABLE TO US. REGARDING PARAGRAPH 3 (REF C), YOU MAY FIND IT USEFUL TO EXPLAIN TO HAMID THAT WE DID NOT INTEND TO IMPOSE ON GOE LEGAL RESPONSIBILITY FOR SAFETY OF CANAL IN SENSE OF LIABILITY FOR DAMAGE AND THAT WE DID NOT IN ANY CASE HAVE IN MIND PROBLEM OF MINES AND ORDNANCE. RATHER, OUR CONCERN WAS TO APPORTION TASKS TO BE UNDERTAKEN BY THE TWO GOVERNMENTS IN CONDUCT OF SALVAGE OPERATION. THUS, FOR EXAMPLE, WE EXPECT THAT GOE WILL DO ANY DREDGING AND REMOVAL OF UNDERWATER OBSTACLES NECESSARY TO ENABLE SALVAGE EQUIPMENT TO MOVE INTO POSITION. HOWEVER, WE THINK THESE POINTS MADE SUFFICIENTLY CLEAR WITHOUT USE OF WORD "SAFETY" AND "SAFE" IN PARAGRAPH 2 AND THUS CAN ACCEPT DELETION.

6. WHILE YOU MAY INFORM HAMID THAT WE PREPARED TO GO AHEAD ON SALVAGE AGREEMENT ON BASIS HIS CHANGES, WE DO NOT WANT TO CONCLUDE SALVAGE AGREEMENT UNTIL AFTER CLEARANCE AGREEMENT CONCLUDED, SINCE FORMER INCORPORATES LATTER BY REFERENCE. RUSH

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